



BOULT • CUMMINGS  
CONNERS • BERRY PLC

RECEIVED

2004 OCT -4 PM 2:05

Henry Walker  
(615) 252-2363  
Fax (615) 252-6363  
Email hwalker@boultcummings.com

T.R.A. DOCKET ROOM

October 4, 2004

Hon. Pat Miller, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

Re: BellSouth Telecommunications Petition for Exemption of Certain Services  
Docket No. 03-00391

Dear Chairman Miller

Attached are the original and thirteen Non- Proprietary copies of the Direct Testimony of Mark E Argenbright on behalf of AT&T Communications of the South Central States, LLC in the above captioned docket.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

Henry Walker

HW/pp

Cc: Guy Hicks, Esq

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

<b>In Re:</b>	)	
	)	
<b>BELLSOUTH TELECOMMUNICATIONS</b>	)	<b>Docket No. 03-00391</b>
<b>PETITION FOR EXEMPTION OF</b>	)	
<b>CERTAIN SERVICES</b>	)	<b>Filed: October 4, 2003</b>
<hr/>	)	

**DIRECT TESTIMONY OF MARK E. ARGENBRIGHT**

**ON BEHALF OF**

**AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, LLC**

**REDACTED VERSION**

**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A My name is Mark E. Argenbright. My business address is 1200 Peachtree St NE, Suite 8100, Atlanta, GA 30309.

**Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

A. I am employed by AT&T Corp. and hold the position of District Manager, Law and State Government Affairs, providing support for AT&T's regulatory advocacy in the nine states that make up AT&T's Southern Region.

**Q. PLEASE SUMMARIZE YOUR TELECOMMUNICATIONS BACKGROUND AND EDUCATION.**

A I graduated from the University of Montana in 1980 and have a Bachelor of Science Degree in Business Administration. I have worked in the telecommunications industry for over 17 years with 15 of those years in the area of regulatory affairs. Before my current position with AT&T, I was employed by WorldCom, Inc. from 1994 to 2002 with multiple responsibilities including development and coordination of various of the company's regulatory and public policy initiatives for the company's domestic operations. This included acting as a witness in support of such initiatives. Prior to that, I was employed by the Anchorage Telephone Utility (now known as Alaska Communications Systems) as a Senior Regulatory Analyst and American Network, Inc. as a Tariff Specialist.

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A To respond to the petition filed by BellSouth prematurely seeking exemption from regulation pursuant to Tenn Code Ann. § 65-5-208(b) for its local Primary Rate

ISDN ("PRI") service offering.<sup>1</sup> In its petition BellSouth erroneously argues that it faces significant current and future competition for PRI service and that this level of competition is sufficient to act as "an effective regulator of the price of those services "

**Q. HOW IS YOUR TESTIMONY STRUCTURED?**

A. My testimony will address the market for PRI service and why it is not sufficiently competitive to be used as the basis for exemption from regulation. Additionally, I will address the critical role that PRI plays in the delivery of Voice Over Internet Protocol ("VoIP") service and how BellSouth, as an unregulated dominant provider, could hamper the development of this new technology. Finally, I will discuss the potential for anti-competitive behavior by BellSouth due to its significant role in providing facilities necessary for a Competitive Local Exchange Carrier ("CLEC") such as AT&T to provision a PRI service in competition with BellSouth

**Q. DOES AT&T PROVIDE PRI SERVICE TO CUSTOMERS IN TENNESSEE?**

A. Yes AT&T has local switches in Nashville, Knoxville, and Chattanooga Tennessee that are equipped to provide PRI service to customers in those markets.

**Q. HOW MANY LOCAL PRI CIRCUITS DOES AT&T PROVIDE TO CUSTOMERS IN TENNESSEE TODAY?**

---

<sup>1</sup> BellSouth's petition also requested exemption for its intraLATA toll service, a matter handled separately from the PRI request

A Within the Nashville, Knoxville and Chattanooga markets AT&T, combined, currently has **\*\*\*BEGIN PROPRIETARY END PROPRIETARY\*\*\*** PRI circuits.

**Q. HOW DOES THIS COMPARE TO THE NUMBER OF PRI CIRCUITS THAT BELL SOUTH HAS IN TENNESSEE?**

A. Based on the number of access lines (USOC: 1LD1E) provided by BellSouth in response to CAD's First Discovery Request, Item No. 9 (Attachment No. 1) as of June 30, 2004, AT&T has just over **\*\*\*BEGIN PROPRIETARY END PROPRIETARY\*\*\*** of the number of PRI circuits BellSouth has in Tennessee. While AT&T is only one competitor in a limited number of markets in Tennessee, this significant disparity in the number of actual PRI circuits between these two carriers certainly does not support BellSouth's assertion that it faces adequate competition to qualify for deregulatory treatment of its PRI service. In fact, BellSouth, in response to CAD's First Discovery Request, Item No. 5, indicates that there are 11 other companies known to offer PRI service in Tennessee. No effort, however, is made to establish the market share of its competitors. Rather, BellSouth relies on a simple count of carriers that purport to offer PRI service and even with that, it is not clear that all of these carriers offer PRI service in BellSouth's operating territory in Tennessee. Such a feeble analysis provides no insight into the actual or potential level of competition faced by BellSouth for PRI service. That no effort was made suggests that the facts would demonstrate that BellSouth is overwhelmingly dominant in the PRI market, which would be consistent with AT&T's understanding of that market. For example, if one were

to make the generous assumption that each of these other carriers, on average, had 25% more PRI circuits than AT&T, BellSouth would still control over \*\*\*BEGIN PROPRIETARY END PROPRIETARY\*\*\* of the market for PRI circuits.

**Q. FOR WHAT PURPOSES DO CUSTOMERS PURCHASE PRI SERVICES?**

A. The primary difference between a DS1 circuit and a PRI circuit, both of which provide bandwidth for 24 channels, is that the DS1 utilizes “in-band” signaling for each individual channel and the PRI utilizes “out-of-band” signaling. This means that the PRI circuit transmits more call control signaling data in a more efficient manner (i.e., utilizing less of the available capacity) than is possible with a DS1. Therefore, for customers with customer premise equipment (“CPE”) that can accept PRI circuits, the PRI circuits offer more call control features, network monitoring, and network allocation capabilities. Internet Service Providers (“ISPs”) are an example of a customer that typically utilizes the sophisticated features of a PRI to manage its network for dial-up Internet services. Another example is larger business customers that need bandwidth for both voice and data applications. PRI circuits allow for the dynamic allocation of the available bandwidth among data and voice uses on a call-by-call basis. VoIP providers are yet another example of customers that utilize PRI circuits. In fact, PRI circuits are required for the transmission path between the VoIP provider’s gateway and the Public Switched Telephone Network (“PSTN”).

**Q. WHY ARE PRI CIRCUITS REQUIRED FOR VoIP PROVIDERS?**

A. Voice calls made via a VoIP application are converted to data packets that are carried over an Internet Protocol (“IP”) based network. When such a call is terminated to a customer served by the PSTN, which is the circumstance for a large percentage of VoIP traffic, the call needs to leave the IP based network via a gateway that is connected to the PSTN. In order for the VoIP call to be accurately converted back to a time division multiplexed or an analog signal with all the appropriate call characteristics, the gateway provider must use the call signaling and control features of the PRI circuits. Likewise, when a call originates on the PSTN and is to be terminated to a VoIP customer, the PSTN originated call is delivered to the VoIP gateway over the PRI circuit. Without the use of a PRI circuit, VoIP calls could not interface with the PSTN with any degree of accuracy or quality.

**Q. SHOULD THIS PARTICULAR USE OF PRI CIRCUITS BE OF CONCERN TO THE TENNESSEE REGULATORY AUTHORITY (“TRA”) AS IT CONSIDERS BELL SOUTH’S REQUEST FOR EXEMPTION FROM REGULATORY OVERSIGHT OF ITS PRI SERVICE?**

A. Yes. BellSouth, in every discussion about the level of competition it faces, points to VoIP as a significant, current source of competition.<sup>2</sup> Given that VoIP providers must purchase PRI circuits in order to deliver VoIP service, the TRA should be wary of eliminating regulatory oversight of BellSouth for such an integral service when it is the dominant provider and views such VoIP PRI

---

<sup>2</sup> AT&T does not accept this argument. VoIP is a nascent application that is only available to the limited segment of the market represented by those customers with broadband connections.

“customers” as competitors. Simply, BellSouth is a dominant provider of a critical input for the delivery of VoIP, a service in its infancy, and which BellSouth sees as a competitive threat.

**Q. WOULD A DS1 BE A DIRECT SUBSTITUTE SERVICE FOR PRI?**

A No. As discussed above, the call control and management capability provided via PRI service are not available with a DS1. Accordingly, any customer that requires the functionality provided by the out-of-band signaling associated with PRI will need to purchase a PRI as a DS1 cannot provide these features.

**Q. WOULD DIGITAL SUBSCRIBER LINE (“DSL”) SERVICE BE A SUBSTITUTE FOR PRI SERVICE?**

A. No. DSL is most valuable as a means to access the Internet. PRI on the other hand provides both data and voice capabilities and is favored by those customers that are utilizing both voice and data within their networks. Accordingly, the only time DSL could be viewed as a substitute for PRI is for those customers that are seeking only Internet access.

**Q. HOW DOES AT&T PROVISION ITS PRI SERVICE?**

A AT&T has equipped its local switches to be capable of providing PRI circuits. These switches are then combined with loop and loop and transport facilities to provision a PRI circuit(s) to a customer location. While AT&T always utilizes its own switches when provisioning PRI circuits, it does not always utilize its own loop and transport facilities. Because the AT&T fiber network only reaches a small portion of the customers within the BellSouth serving territory, AT&T must rely on other loop and transport providers in order to serve all of the PRI



customers. In fact, only a small percentage of AT&T's PRI customers are provisioned with AT&T's own loop and transport facilities. For over \*\*\***BEGIN PROPRIETARY END PROPRIETARY**\*\*\* of the PRI circuits it provisions, AT&T utilizes digital special access circuits purchased from BellSouth to connect customers to the AT&T PRI equipped switch.

**Q. HOW DOES AT&T VIEW THE MARKET IN TERMS OF PRICING FOR ITS PRI SERVICE?**

A. AT&T views BellSouth as the price leader for PRI service. This means that AT&T establishes the pricing of its PRI service based on BellSouth's pricing for PRI, attempting to keep its price under that offered by BellSouth.

**Q. DO THESE PROVISIONING AND PRICING REALITIES RAISE ADDITIONAL CONCERNS SURROUNDING BELL SOUTH'S REQUEST?**

A. Yes. Because BellSouth is both an integral provider of the necessary digital facility over which its competitors provision PRI and the dominant provider of the retail PRI service in the market, the conditions are ripe for BellSouth to utilize its position in an anti-competitive manner by implementing a price squeeze.

BellSouth has described a price squeeze as follows:

"A price squeeze involves the situation where a vertically integrated firm that controls an essential facility or essential input charges so much for the use of that facility or that input to a wholesale customers that that customer cannot compete at retail with the vertically integrated firm."<sup>3</sup>

---

<sup>3</sup> *Motion of BellSouth Telecommunications, Inc. and Response to AT&T's Comments on BellSouth's Presumptive Validity Tariff*, Kentucky Public Service Commission Case No. 2002-00276, dated March 13, 2003, at p. 7. Of course, reduction in the price of the retail offering would result in the same price squeeze situation.

Simply, without regulatory oversight of BellSouth's pricing of its PRI offering, BellSouth would be in the position of being able to move its PRI pricing toward the price of its digital special access, an essential facility. While BellSouth can reduce its price for PRI today, it must be done in an environment which affords the TRA the opportunity to review and competitors to comment on and/or object to such a proposed price reduction. Under BellSouth's proposal, such oversight capabilities would be eliminated. Therefore, while such reductions may appear to resemble the result of competition, in reality the consumer benefits would be temporary as CLECs such as AT&T would ultimately not be able to offer PRI service to those customers that are not on the CLEC's own loop and transport facilities. As discussed above, this would preclude AT&T from making a competitive PRI offer in the majority of its service territory (which is already smaller than the territory served by BellSouth).

**Q. HAS BELL SOUTH DEMONSTRATED THAT IT IS DISADVANTAGED IN THE PRI MARKETPLACE DUE TO ITS CURRENT REGULATORY OBLIGATIONS FOR THIS SERVICE?**

- A. No. Their petition for exemption simply asserts that they face "substantial competitive activity" for PRI service and therefore the TRA should cede its authority to regulate BellSouth's offering. At no point does BellSouth give any examples of any limitations in its ability to offer PRI service, set its pricing, or even respond to competitive offers to the extent they do appear. Additionally, BellSouth already has regulatory flexibility for PRI service via the CSA process codified at Tenn. Code Ann. Section 65-5-201 (b). CSAs are presumptively valid,

effective upon filing, with the result that BellSouth can enter into an agreement with a customer without regulatory delay. Because the CSA statute provides pricing flexibility and exempts BellSouth from the prohibition against price discrimination,<sup>4</sup> BellSouth is able to negotiate and offer services based on competitive market conditions. PRI service is a high capacity service that is typically purchased by larger, sophisticated telecommunications users that are accustomed to entering into contracts for such services. The current level of regulatory flexibility enjoyed by BellSouth via the use of CSAs should be adequate to ensure that the dominant provider of PRI service is able to meet the demands of the market.

### **CONCLUSION**

**Q. WHAT ACTION SHOULD THE TRA TAKE WITH REGARD TO BELL SOUTH'S REQUEST FOR EXEMPTION FROM REGULATORY OVERSIGHT FOR ITS PRI SERVICE?**

A. The TRA should deny BellSouth's premature and unjustified request. Until such time as BellSouth can demonstrate that it is no longer the dominant provider of PRI service in Tennessee and is not in a position to engage in anti-competitive activities, the TRA should retain its regulatory authority over BellSouth's offering. Further, granting BellSouth's request at this time would put BellSouth

---

<sup>4</sup> BellSouth is still subject to the pricing restrictions set forth in Tenn. Code Ann. Section 65-5-208(c), which sets a price floor and allows the TRA to adopt rules and orders to prohibit "cross-subsidization, preferences to competitive services or affiliated entities, predatory pricing, price squeezing, tying arrangements or other anti-competitive activities." Even if its Petition in this docket is granted, BellSouth should still be subject to Section 65-5-208(c). If BellSouth disagrees with this point, that should be made clear so that the TRA will have the benefit of fully understanding the ramifications of BellSouth's request.

in a position to exercise market power in conjunction with a critical input for the implementation of VoIP applications, to the detriment of this emerging service.

**Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

A. Yes.

## CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2004, a copy of the foregoing document was served on the following parties, via U.S. mail

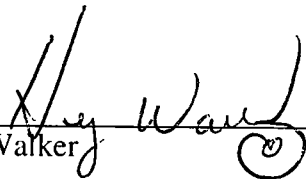
Joelle Phillips, Esq  
BellSouth Telecommunications, Inc  
333 Commerce St., Suite 2101  
Nashville, TN 37201

Charles B. Welch, Esq.  
Farris, Mathews, et al.  
618 Church St., #300  
Nashville, TN 37219

Joe Shirley  
Assistant Attorney General  
Office of Tennessee Attorney General  
P O Box 20207  
Nashville, TN 37202

Edward Phillips, Esq.  
United Telephone – Southeast  
14111 Capital Blvd.  
Wake Forest, NC 27587

Guilford Thornton, Esq  
Stokes & Bartholomew  
424 Church Street, #2800  
Nashville, TN 37219

  
Henry Walker